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Supreme Court, U.S.
FILED
MAR 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1049

In The

Supreme Court of the United States

October Term, 1988

GRANGE INSURANCE ASSOCIATION,

Petitioner,

v.

STATE OF WASHINGTON; Bob J. Mickelson and Jane Doe Mickelson; Peter Bidlake and Jane Doe Bidlake; John Doherty and Jane Doe Doherty; Milton Skov and Jane Doe Skov, Gary Stromier and Jane Doe Stromier; STATE OF IDAHO; Clyde Hughes and Jane Doe Hughes; and John Does I through X,

Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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STATUTE:

Idaho Code § 25-601 2

STATEMENT OF THE CASE

The Petitioner, Grange Insurance Association, brought a contribution action as the assignee of all claims of Harold and Rose Marie Holloway. On June 29, 1984, two judgments in the amount of $2,933,235.12 were entered against the Holloways in the Superior Court of Washington for Whatcom County. While these judgments were in the process of being appealed to the Washington State Court of Appeals, Division I, Grange Insurance Association settled the claims against the Holloways by paying $1,500,000.00 to the plaintiffs in those cases. In return for that payment by Grange Insurance Association, the Holloways assigned all claims they might hold against the Respondents in the present action to Grange Insurance Association.

In the original action, it was alleged that the Holloways sold dairy cattle infected with brucellosis to several of the plaintiffs. The brucellosis allegedly spread from the infected cattle to the dairy herds of the purchasers and to herds on neighboring farms. The plaintiffs were, thus, forced to destroy their herds due to the alleged negligent sale of infected cattle by the Holloways. Grange Insurance Association settled the judgments that were obtained as a result of those claims and now seeks contribution from Respondent State of Idaho and others in the present lawsuit.

Grange Insurance Association now alleges that the brucellosis-infected cattle came from the State of Idaho. Further, Grange Insurance Association alleges that during the time period material to this action, the State of Idaho negligently implemented and maintained its program

of brucellosis evaluation and control. As they involved the present litigation, the activities of the State of Idaho were confined within her own borders. Idaho Code § 25-601 requires that any and all dairy cattle sold for dairy purposes must be tested for brucellosis when ownership of the animals changes hands regardless of the ultimate destination of those cattle. It is contended that negligence on the part of the State of Idaho, arising out of activities conducted completely within the State of Idaho, was the cause of the injuries suffered by the plaintiffs in the original action. It is on this contention that Grange Insurance Association bases its claim for contribution and seeks to obtain personal jurisdiction over the State of Idaho.

SUMMARY OF ARGUMENT

The Washington State Supreme Court ruled that Idaho's activities in inspecting dairy cattle for brucellosis did not constitute a purposeful availment of the Washington forum. Because of this ruling, the Court did not reach the question of whether or not an exercise of jurisdiction would be reasonable. This ruling follows the due process analysis established by this Court and does not conflict with decisions of this Court or other state or federal appellate courts.

ARGUMENT

The Supreme Court of the State of Washington utilized the following three-prong test to analyze the due process requirements for the establishment of personal jurisdiction:

1. A defendant must purposefully establish "minimum contacts" with the foreign state;
2. The plaintiff's injuries must arise out of those minimum contacts;
3. The exercise of jurisdiction must be consistent with notions of "fair play and substantial justice."

See, Petition for a Writ of Certiorari to the Supreme Court of the State of Washington, Appendix "B", p. B-14. Noting the fact that the Idaho agent involved knew that the cows being tested were intended for sale to a Washington buyer, the Washington Supreme Court referred to the ceas of *Asahi Metal Industry Company v. Superior Court,* 480 U.S. 102 (1987). In *Asahi, Supra,* four members of this Court held that mere awareness that a product would reach a particular forum is insufficient to constitute purposeful availment. *Asahi,* 480 U.S. at 112.

Although Respondent State of Idaho argued before the Washington Supreme Court that Idaho's mere awareness that the cattle in question were sold to a Washington buyer was insufficient to invoke personal jurisdiction, the Washington Supreme Court did not rule on that basis. Rather, the Court held that Idaho's non-economic governmental activity did not constitute a purposeful availment of ". . . the benefits of the Washington markets." Petition for Writ of Certiorari to the Supreme Court of the

State of Washington, Appendix "B", p. B-30. Because the Court did not find facts which would satisfy the first prong of the due process analysis, no analysis was conducted as to the reasonableness of the assertion of jurisdiction in this case.

I. There Is No Conflict Between Decisions Of This Court And The Decision Of The Washington State Supreme Court.

Petitioner cites three decisions of this Court that it maintains conflict with the decision of the Washington State Supreme Court. The first two cases cited are recent pronouncements by this Court regarding the due process test for an assertion of personal jurisdiction. *Burger King Corporation v. Rudzewicz,* 471 U.S. 462 (1985); *Asahi Metal Industry Company v. Superior Court, Supra.*

Petitioner's argument regarding these two cases is somewhat unclear. Petitioner seems to assert that a dismissal for lack of personal jurisdiction may not be made without considering whether or not an assertion of jurisdiction would be "reasonable." Such an argument simply ignores the repeated holdings by this Court that, prior to exercising personal jurisdiction over a defendant, some minimum contacts must exist which constitute a purposeful availment of the laws of the forum state. *Burger King Corporation v. Rudzewicz,* 471 U.S. at 475; *Hanson v. Denckla,* 357 U.S. 235, 253 (1958).

Petitioner also argues that the decision in *Burger King Corporation v. Rudzewicz, Supra,* places the burden of proof on the defendant in a personal jurisdiction argu-

ment. This argument, however, is correct only if the court reaches the third prong of the due process test regarding the reasonableness of asserting jurisdiction over a defendant.

> Once it has been decided that a defendant purposefully established minimum contacts with the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with "fair play and substantial justice."
>
> . . . .
>
> . . . where a defendant who purposefully has directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.

Burger King Corporation v. Rudzewicz, 471 U.S. at 476-477. The Petitioner was required to show that the State of Idaho met the purposeful availment requirements of a due process analysis and the failure to do so resulted in the dismissal by the Washington State Supreme Court.

The Petitioner also cites the case of *Nevada v. Hall,* 440 U.S. 410 (1979), as an example of the decision of this Court which conflicts with the decision of the Washington State Supreme Court. An examination of *Nevada v. Hall, Supra,* however, reveals that the case dealt solely with the issue of sovereign immunity. The sole question in *Nevada v. Hall,* was whether a California court could exercise jurisdiction over the State of Nevada in any circumstances. As such, the case did not deal with due process requirements for personal jurisdiction and is irrelevant to the present proceeding.

II. The Courts Of Other Jurisdictions Cited By Petition Are Not In Conflict With The Washington State Supreme Court Decision.

The Petitioner cites *Biscoe v. Arlington County,* 738 F.2d 1352 (D.C.Cir.1984), *Simmons v. State,* 670 P.2d 1372 (1983), and *Wright v. Yackley,* 459 F.2d 287 (9th Cir. 1972), as holdings in conflict with the Washington State Supreme Court decision. Once again, Petitioner's argument is somewhat difficult to follow and appears to misstate the holdings of the courts in each of these cases.

In *Biscoe, Supra,* the issue was the same as that in *Nevada v. Hall.* The *Biscoe* court decided the case on questions of sovereign immunity and, quite simply, did not address due process requirements for assertions of personal jurisdiction.

The Petitioner cites the case of *Simmons v. State, Supra,* for the proposition that a case may not be dismissed for lack of personal jurisdiction based solely upon the purposeful availment requirement of a due process analysis. This is simply incorrect. The Montana court in *Simmons* engaged in an extensive purposeful availment analysis and reached the following conclusion:

> "Thus, we cannot say that Oregon has purposely availed itself of the privilege of conducting activities in this forum. Admittedly, a fair argument to the contrary can be made if one accepts an analogy between Oregon's contractual obligations and those of a private company interjecting itself into the Montana economy. Nevertheless, even if we accept this analogy for the purpose of argument, the assertion of jurisdiction would not pass muster under the 'reasonableness' aspect of the three-pronged test. It is to the question of reasonableness that we now turn our attention."

Simmons v. State, 670 P.2d at 1382. Thus, the *Simmons* decision was made on alternative grounds and does not support the argument made by Petitioner.

Finally, the court in *Wright v. Yackley, Supra,* specifically held that the defendant in that instance did not meet the purposeful availment requirement of a due process analysis. *Wright v. Yackley,* 459 F.2d at 290. Although Petitioner argues that *Wright* was decided under the Idaho State long-arm statute, the court in that case specifically noted that the question before it was whether an assertion of jurisdiction was contrary to the constitutional principles of due process. *Wright v. Yackley,* 459 F.2d at 288.

———o———

CONCLUSION

The Washington State Supreme Court affirmed the dismissal of the State of Idaho from this lawsuit under a traditional due process analysis as established by this Court. The Court ruled that no facts exist in this case to support a finding of personal jurisdiction. The analysis used by the Court was appropriate and cannot be said

to conflict with the decisions of this or any other court. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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